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APPLICATION OF

WHITE OAK POWER COMPANY

CASE NO. PUE-2002-00305

**For authority to construct
and operate an electric generating
facility**

REPORT OF ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER

March 31, 2003

White Oak seeks approval to construct and operate a 680 MW peaking facility at a site in Pittsylvania County, Virginia. The facility will consist of four simple-cycle combustion turbine units, and will supply electricity to the Virginia market. The facility will interconnect with an on-site AEP aerial transmission line. The facility will be powered by natural gas and will use fuel oil with low-sulfur and low-nitrogen as a back-up fuel. Columbia Gas intervened in this case to question whether White Oak may construct a lateral pipeline between its Facility and an interstate natural gas pipeline.

HISTORY OF THE CASE

On May 9, 2002, White Oak Power Company, LLC (“White Oak” or “Company”) filed an Application with supporting testimony and exhibits requesting that the State Corporation Commission (“Commission”) grant a certificate of public convenience and necessity (“Certificate”), pursuant to §§ 56-46.1 and 56-580 D of the Virginia Code, to construct, own, and operate the 680 MW peaking, electrical power generation facility (“Facility”) and related piping at a site in Pittsylvania County, Virginia, near Dry Fork. White Oak proposed to construct, own, and operate the four simple-cycle combustion turbine units (“CTs”), each with a nameplate rating of 170 MW. The primary fuel for the project will be natural gas, with fuel oil low in sulfur and nitrogen as a back-up fuel. In its Application, White Oak committed to limit its total annual operating hours to 10,000 hours on natural gas, or an average of 2,500 hours per CT, and 2,000 hours on fuel oil, or an average of 500 hours per CT.¹

On June 21, 2002, the Commission entered its Order for Notice and Hearing, in which it required White Oak to provide notice of its Application, established a procedural schedule, set the evidentiary hearing for October 24, 2002, and assigned the matter to a hearing examiner.

On or about July 1 and 2, 2002, the Company published notice as prescribed by the Commission. White Oak provided proof of publication to the Commission.

On July 16, 2002, Columbia Gas of Virginia, Inc. (“Columbia”) filed its Notice of Participation.

¹ Application at 8.

The evidentiary hearing was convened as scheduled on October 24, 2002. Patrick A. O'Hare, Esquire, appeared on behalf of White Oak. James S. Copenhaver, Esquire, appeared on behalf of Columbia. Arlen Bolstad, Esquire, and Joseph Lee, Esquire, appeared on behalf of the Staff. Filed with this Report is a transcript of the hearing.

SUMMARY OF THE RECORD

Examination of the record will begin with the testimony offered by public witnesses at the evidentiary hearing. Other testimony and exhibits offered into evidence will then be analyzed in the following order: (i) White Oak's prefiled direct testimony; (ii) Columbia's prefiled direct testimony, (iii) Staff's prefiled testimony, and (vi) White Oak's prefiled rebuttal testimony.

A. Public Testimony Offered At The Public Hearing

Two public witnesses, William D. Sleeper, county administrator for Pittsylvania County, and Robert Myers, president of the Virginia State Building Trades Council, offered testimony in this matter.

Mr. Sleeper testified that the Board of Supervisors of Pittsylvania County supported this project.² Mr. Sleeper indicated that representatives of the Company's parent, Florida Power & Light ("FPL") held four or five meetings with the Board of Supervisors and people from the Dry Fork community to discuss the impact of the Facility on the County.³ Mr. Sleeper explained that although another subsidiary of FPL operates a similar facility in Pittsylvania County, about forty miles will separate the two plants.⁴ Mr. Sleeper stated that when the County purchased the landfill upon which the Facility will be built, it hoped to attract a cogenerator to take advantage of the proximate location of facilities owned by Transcontinental Gas Pipeline Company ("Transco"), Appalachian Power, and Virginia Power.⁵

Mr. Myers advocated use of the local area's workforce to construct the Facility.⁶ Mr. Myers urged FPL to consider using the local building trades people who can be brought into the Virginia State Building Trades Council's apprenticeship and training programs.⁷ Mr. Myers maintained that the use of local labor would be good for the community as a whole.⁸

B. White Oak's Direct Testimony

White Oak prefiled the direct testimony of John DiDonato, project manager for FPL Energy, LLC ("FPL Energy"), an indirect wholly owned subsidiary of FPL Group Inc. ("FPL

² Sleeper, Tr. at 18.

³ *Id.* at 19.

⁴ *Id.*

⁵ *Id.* at 20-21.

⁶ Myers, Tr. at 23.

⁷ *Id.*

⁸ *Id.*

Group”);⁹ the direct testimony of Richard G. Piper, manager in the Environmental Services Department of FPL;¹⁰ and William L. Sheehan, Jr., project manager for FPL Energy.¹¹ At the hearing, Barbara P. Linkiewicz, CHMM, senior environmental specialist in the Environmental Services Department of FPL, adopted and presented the direct testimony of Mr. Piper.¹² In addition, Mark Cifone, project technical development manger for FPL Energy, adopted and presented the direct testimony of Mr. Sheehan.¹³ These testimonies are summarized below.

1. Mr. DiDonato’s Direct Testimony

Among other things, Mr. DiDonato described: (i) FPL Energy and its operations; (ii) FPL Energy’s relationship to White Oak; (iii) the location and purpose of the Facility; (iv) White Oak’s commitment to federal, state and local laws and regulations; (v) the role of merchant plants within the electric power industry; (vi) interconnection; and (vii) the Facility’s contribution to reliability of electric service.

FPL Energy and its Operations. Mr. DiDonato testified that FPL Energy is located in Juno Beach, Florida, and is a leader in developing clean fuel independent power projects.¹⁴ FPL Energy is a wholly owned subsidiary of FPL Group Capital, Inc., which is a wholly owned subsidiary of FPL Group.¹⁵ FPL Group is publicly traded and owns FPL, a regulated electric utility, which serves more than seven million people.¹⁶ Mr. DiDonato reported FPL Energy has plants in operation or under construction in seventeen states totaling approximately 10,000 MW of generation.¹⁷ Included among this generation is the 820 MW, natural gas-fired plant at Doswell, Virginia.¹⁸

FPL Energy’s Relationship to White Oak. Mr. DiDonato described White Oak as a limited liability company organized under the laws of Delaware, with its principal place of business in Juno Beach, Florida.¹⁹ White Oak is a single-purpose company formed under FPL Energy.²⁰

Mr. DiDonato confirmed the Company intends to construct a four-unit simple cycle combustion turbine generating facility with a nominal net capacity of 680 MW.²¹ The Facility will burn primarily natural gas fuel and interconnect to the Appalachian Power transmission

⁹ Exhibit No. 1.

¹⁰ Exhibit No. 4.

¹¹ Exhibit No. 6.

¹² Linkiewicz, Tr. at 54-55.

¹³ Cifone, Tr. at 68-69.

¹⁴ Exhibit No. 1, at 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ *Id.* at 5.

²¹ *Id.*

grid.²² Mr. DiDonato estimated the cost of the Facility at approximately \$260 million.²³ Mr. DiDonato testified that initially FPL Energy will use a combination of internally generated funds and equity contributions from its parent to fund the project.²⁴ Eventually, FPL Energy will seek non-recourse financing as either an individual project transaction or a pooled-asset arrangement in the project finance bank market or debt capital market.²⁵ Mr. DiDonato advised that FPL Energy recently completed transactions in each of these markets and has the experience, financial strength and corporate resources available to ensure that White Oak reaches a successful financial close.²⁶ Mr. DiDonato advised that the Company expects the Facility to be in commercial operation by June 2004.²⁷

Facility's Location and Purpose. Mr. DiDonato stated the Facility will be located on a 126-acre site about 12 miles north of Danville in Pittsylvania County.²⁸ The site was selected in coordination with the Pittsylvania County Economic Development Corporation and local county leaders.²⁹ Mr. DiDonato explained that the County rezoned the property from M-1, Light Industry, to M-2, Heavy Industry, which means that further land use or zoning permits will be required.³⁰ Mr. DiDonato testified that the project will generate approximately \$1.2 million in annual property tax revenues and will employ about 200 workers during the peak construction period and about seven to ten full-time skilled employees in the operation of the Facility.³¹ In addition, Mr. DiDonato confirmed White Oak has agreed to reimburse the County for the costs of extending public water to the Facility.³²

Mr. DiDonato explained that the Facility will operate as a peaking plant and is not expected to replace any existing generating facilities.³³

Commitment to Federal, State, and Local Laws and Regulations.

Mr. DiDonato testified that the Facility will have no adverse impacts on water, noise, air quality, and natural resources and will comply with all environmental permitting standards and requirements.³⁴ In addition, he offered assurance that the Facility will conform to applicable state and local laws and regulations.³⁵ For example, after discussions with the Virginia Department of Environmental Quality ("DEQ"), White Oak agreed to lower the emission control

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 5-6.

²⁷ *Id.* at 6.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 6-7.

³² *Id.* at 7.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

stack to 130 feet and eliminated the need to discharge wastewater to the County's wastewater treatment facility.³⁶

Role of Merchant Plants in the Electric Power Industry.

Mr. DiDonato maintained that the need analysis for a merchant plant requires a lower level of scrutiny than is required for utility-owned generation.³⁷ Mr. DiDonato contended market forces act to protect ratepayers as the risk of insufficient need is borne by the owners of the merchant plant, not by the ratepayers.³⁸ Indeed, Mr. DiDonato argued the risk to ratepayers would occur if the merchant plant is not built and there is insufficient capacity or power resources.³⁹

Interconnection.

Mr. DiDonato explained that the Facility will connect with an onsite AEP aerial transmission line and then connect directly to AEP's East Danville substation via a single circuit transmission line.⁴⁰ Mr. DiDonato confirmed that White Oak will fund any necessary reinforcements required to interconnect with AEP.⁴¹ Further, Mr. DiDonato testified that interconnection of the Facility with the Transco Pipeline should create no capacity shortages or other reliability issues with regard to the availability of natural gas to homes or businesses.⁴²

Reliability of Electric Service.

Mr. DiDonato stated that the analysis of the need for a merchant plant must look at an entire regional market.⁴³ In this regard, Mr. DiDonato indicated that the Company projects a need for over 13,000 MW of additional generating capacity in the Virginia-Carolina ("VACAR") subregion of the Southeastern Electric Reliability Council ("SERC") by the end of 2010, and over 49,000 MW of additional generating capacity by the end of 2025.⁴⁴ Likewise, the Company estimated the need for additional generating capacity for the area covered by the East Central Area Reliability Council ("ECAR"), which covers the area where the Facility will be located, to be an additional 16,000 MW by the end of 2010.⁴⁵ Mr. DiDonato advised that Virginia is not isolated from regional reliability issues and problems.⁴⁶ The proposed Facility will promote both statewide and regional reliability by adding 680 MW of additional electric capacity that will be

³⁶ *Id.* at 14.

³⁷ *Id.* at 8-9.

³⁸ *Id.* at 9.

³⁹ *Id.* at 9-10.

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 7-8.

⁴² *Id.* at 8.

⁴³ *Id.* at 10.

⁴⁴ *Id.* at 11.

⁴⁵ *Id.*

⁴⁶ *Id.* at 13.

available to meet higher than projected customer demand induced by extreme weather and unexpected equipment shutdowns or outages.⁴⁷

2. Mr. Piper's Direct Testimony, adopted by Ms. Linkiewicz

Mr. Piper's prefiled testimony, adopted by Ms. Linkiewicz, addressed the minimal nature of the environmental impact of the Facility.⁴⁸ In addition, this testimony introduced White Oak's reports and investigations on air quality, water quality, noise, cultural resources, and natural resources.⁴⁹

Air Emissions. Ms. Linkiewicz testified that the Facility will be located in an area currently classified as in attainment, or unclassified, with all Ambient Air Quality Standards.⁵⁰ Air emissions from the four General Electric Model 7 FA combustion turbines will include nitrogen oxides, sulfur dioxide, carbon monoxide, volatile organic compounds, and particulate matter ("PM").⁵¹ Ms. Linkiewicz stated that the Facility will employ dry-low-NO_x combustion technology.⁵² White Oak performed an air dispersion modeling analysis to evaluate the impact of plant emissions in support of its Prevention of Significant Deterioration ("PSD") Construction Permit submitted to DEQ, which showed that the Facility would comply fully with the applicable air quality regulations including the PSD Class I and II increments and Ambient Air Quality Standards.⁵³ In addition, Ms. Linkiewicz presented the results of the Company's cumulative impacts analysis, which demonstrates that the cumulative impact of 23 proposed power plants will not result in an adverse cumulative impact on the ambient air quality, nor will PSD increments be exceeded.⁵⁴

Water Resources and Water Quality. Ms. Linkiewicz asserted that the proposed Facility has minimal requirements for water.⁵⁵ Ms. Linkiewicz estimated that the Facility will require approximately 92,000 gallons of water per day during gas operations and 188,000 gallons of water per day during oil operations.⁵⁶ Ms. Linkiewicz reported that the Pittsylvania County Public Service Authority ("County Authority") has more than adequate water supply capabilities and will provide the Facility its required water.⁵⁷

Ms. Linkiewicz testified that the proposed Facility will generate a minimal amount of wastewater.⁵⁸ Wastewater generated during production, such as water treatment system reject

⁴⁷ *Id.* at 13-14.

⁴⁸ Exhibit No. 4, at 2-3.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 4.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 5; Appendix A, Attachment 8d.

⁵⁵ *Id.* at 5.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

and wet surface air cooler blowdown, will be stored on-site in tanks and shipped off-site for proper disposal.⁵⁹ In addition, she confirmed that domestic wastewater, or wastewater from bathroom and kitchen facilities, will be discharged to an on-site septic system pursuant to a permit to be obtained from the State Department of Health.⁶⁰

For control of stormwater runoff, Ms. Linkiewicz explained that White Oak would construct three stormwater detention ponds.⁶¹ White Oak will submit a soil and erosion control plan to the County for approval, and obtain a VPDES stormwater permit and a general stormwater permit for industrial activities from DEQ.⁶²

Solid and Hazardous Waste. Ms. Linkiewicz testified that during construction, all refuse will be collected in containers and disposed of off-site in a manner meeting applicable local, state, and federal requirements.⁶³ After construction and during operation, Ms. Linkiewicz affirmed that White Oak would comply with EPA and DEQ regulations and have the small quantities of hazardous waste taken off-site by permitted transporters and delivered to permitted facilities for treatment or disposal.⁶⁴

Noise Impacts. Ms. Linkiewicz stated that the Company had a comprehensive ambient noise-monitoring study performed on September 19 and 20, 2001, to assess the existing (background) noise levels in the project area.⁶⁵ The Facility will incorporate noise controls, such as sound absorbing materials in the inlet of the combustion turbines, enclosures for the combustion turbines and electric generators, and silencers in the stacks.⁶⁶ Ms. Linkiewicz asserted the estimated noise levels of the Facility are comparable to the existing noise levels in the area and are within federal guidelines. In addition, Ms. Linkiewicz noted that the Facility is exempt from the noise ordinance of Pittsylvania County.

Archaeological, Historical, and Architectural Resources. Ms. Linkiewicz testified that a Phase I Archaeological survey concluded there were no significant archaeological resources present at the site.⁶⁷ The Department of Historic Resources (“DHR”) agreed with the survey.⁶⁸ In addition, Ms. Linkiewicz indicated a Phase I Architectural Survey found that four properties may be eligible for listing in the National Register of Historic Places.⁶⁹ The Company is awaiting the outcome of DHR’s review of the survey.⁷⁰

⁵⁹ *Id.*

⁶⁰ *Id.* at 5-6.

⁶¹ *Id.* at 6.

⁶² *Id.*

⁶³ *Id.* at 7.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 8.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

Natural Resources. Ms. Linkiewicz advised that the construction and operation of the Facility should have no impacts on natural resources.⁷¹ The site has been used in agriculture for more than a hundred years.⁷² No forests or other natural resources will be destroyed.⁷³ Further, Ms. Linkiewicz stated “[n]o rare, threatened, or endangered species are known to occur on the site nor were any observed during site visits.”⁷⁴

Environmental Permits. Ms. Linkiewicz provided a complete listing of all environmental permits and approvals that must be obtained for this project.⁷⁵ In addition, Ms. Linkiewicz disclosed that the Company submitted the final PSD permit application to the DEQ on September 4, 2001 and the Title IV Acid Rain Permit application on September 12, 2001.⁷⁶ Also, the USACE approved the location and extent of wetlands on the Facility’s site.⁷⁷ Ms. Linkiewicz estimated wetlands impact, primarily related to the extension of the natural gas pipeline to meet the Transco transmission line, to be less than 0.5 acres, which qualifies the project for a nationwide permit from the USACE or a general permit from the DEQ.⁷⁸

3. Mr. Sheehan’s Direct Testimony, adopted by Mr. Cifone.

Mr. Cifone provided further description of the proposed Facility.⁷⁹ According to Mr. Cifone, the Facility will be constructed on twenty-nine acres in Pittsylvania County, on a portion of a one hundred twenty-six-acre tract of land, approximately twelve miles north of the City of Danville.⁸⁰ The Facility will consist of four simple-cycle combustion turbines, with a nominal capacity of 680 MW.⁸¹ Each combustion turbine will be enclosed in its own weather tight acoustical enclosure and have an individual 130-foot-tall stack.⁸² Mr. Cifone stated that the site will include: (i) two water tanks, (ii) two natural gas heaters, (iii) an access road, (iv) parking area, (v) two detention ponds for stormwater management, (vi) one wet surface to air cooler, and (vii) other support components.⁸³

Mr. Cifone testified that the Facility will interconnect with existing on-site aerial transmission lines owned by AEP via a 138 kV or 230 kV interconnector transmission line about

⁷¹ *Id.* at 9.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*; Application at ¶ 11.

⁷⁶ Exhibit No. 4, at 9.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Exhibit No. 6.

⁸⁰ *Id.* at 2.

⁸¹ *Id.*

⁸² *Id.* at 2, 3.

⁸³ *Id.*

twelve miles in length and connect directly to AEP's East Danville substation.⁸⁴ Mr. Cifone confirmed White Oak will fund any required transmission system upgrades.⁸⁵

Mr. Cifone explained that the Facility will obtain its natural gas from Transco, which has a gas pipeline located about 3,000 feet from the proposed site. Mr. Cifone advised that a new lateral gas line will be built to connect the site with Transco and will likely use the existing AEP transmission line easement.⁸⁶

Mr. Cifone provided further details concerning the major components of the Facility. The combustion turbines will be four simple-cycle General Electric Frame 7 FA combustion turbines with dry low-NO_x combustors.⁸⁷ Fuel oil will be used when natural gas transportation is unavailable or when the delivered price of gas is greater than fuel oil.⁸⁸ Mr. Cifone affirmed White Oak will limit its annual use of fuel oil to 2,000 hours for an average of 500 hours per CT.⁸⁹ An aboveground storage tank, with a capacity of 2,000,000 gallons, will be a field-erected steel tank on a concrete foundation and will comply with the applicable building codes, construction standards, and regulations of the Virginia State Water Control Board.⁹⁰ For example, the containment berm will be designed to hold 10% more than the capacity of the tank.⁹¹

Mr. Cifone testified that local emergency responders include the Dry Forks Volunteer Station # 17, which is about three miles from the Facility, and the Chatham Rescue Squad, which is about five miles from the Facility.⁹²

Mr. Cifone described the Facility's water requirements. The Facility will use potable water, with additional treatment at the Facility, for inlet air cooling of the turbine, and injection into the combustion turbine combustor system during oil operations.⁹³ In addition, water will be used for periodic washing of the turbine compressor, wet surface to air coolers for the turbine equipment, fire protection, plant washdowns and other water needs.⁹⁴ Mr. Cifone estimated the Facility will require approximately 92,000 gallons of water per day during gas operations and 188,000 gallons of water per day during oil operations.⁹⁵ Mr. Cifone confirmed the County Authority will meet these needs.⁹⁶

⁸⁴ *Id.* at 3.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 4.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 5.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

Finally, Mr. Cifone projected that it will take between twelve and eighteen months from the time all approvals have been obtained to complete construction.⁹⁷ Thus, Mr. Cifone disclosed that White Oak expects the Facility to be operational in June 2004.⁹⁸

C. Columbia's Prefiled Direct Testimony of Raymond Gabehart

On August 20, 2002, Columbia filed the direct testimony of Raymond Gabehart, manager of sales for Columbia. In his testimony, Mr. Gabehart requested that the Commission limit any approvals granted in this proceeding to White Oak's proposed electric generating facility and associated facilities located on-site.⁹⁹ Mr. Gabehart testified that Columbia is concerned with the 3000-foot natural gas lateral pipeline ("Lateral") White Oak proposes to construct to connect with Transco's interstate pipeline.¹⁰⁰ Specifically, Mr. Gabehart contended that White Oak failed to request or support a Certificate to construct, own or operate the Lateral.¹⁰¹ Nor did White Oak's public notice make reference to the Lateral or set forth its route.¹⁰² Consequently, Columbia requested that the Commission clarify that White Oak's construction, ownership, and operation of the Lateral is subject to an appropriate application, public notice, and approval by the Commission.¹⁰³

Mr. Gabehart explained that the site for the proposed Lateral is in Columbia's service territory, as reflected in Certificate No. G-147.¹⁰⁴ Columbia currently serves approximately 360 customers in Pittsylvania County, or approximately 246 residential, 113 commercial, and three industrial customers.¹⁰⁵ In addition, Mr. Gabehart pointed out that Columbia provides transportation service to eight electric generation facilities within its service territory.¹⁰⁶ Mr. Gabehart contended that by installing facilities to serve generation units, Columbia is able to serve new customers in otherwise rural or undeveloped areas.¹⁰⁷ Because Columbia is certificated to serve other customers, Mr. Gabehart argued Columbia can provide a more efficient utilization of facilities and avoid wasteful duplication of natural gas infrastructure.¹⁰⁸

Mr. Gabehart testified that no customer-owned natural gas pipeline facilities currently serving electric generation are located within Columbia's certificated service territory.¹⁰⁹ This includes Virginia Power's Chesterfield Power Station.¹¹⁰ Furthermore, Mr. Gabehart stated that he was unaware of any certificated electric generation facilities within Columbia's service

⁹⁷ *Id.* at 6.

⁹⁸ *Id.*

⁹⁹ Exhibit No. 8, at 2.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 3.

¹⁰⁴ *Id.* at 4.

¹⁰⁵ *Id.* at 5.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 6.

¹¹⁰ *Id.*

territory that are currently being served by a pipeline facility owned by an entity other than Columbia or an interstate pipeline that is subject to the jurisdiction of the Federal Energy Regulatory Commission.¹¹¹ Finally, Mr. Gabehart reported that he was unaware of any attempt by White Oak to discuss or consult with Columbia regarding the Lateral.¹¹²

D. Staff's Direct Testimony

The Staff presented the prefiled testimony of three witnesses: Mark A. Tufaro, utilities analyst in the Division of Energy Regulation; John R. Ballsrud, principal financial analyst in the Division of Economics and Finance; and Jarilaos Stavrou, principal research analyst in the Division of Economics and Finance. The testimony of each of these witnesses is summarized below.

1. Mr. Tufaro's Direct Testimony

Mr. Tufaro described the criteria applied by Staff in evaluating White Oak's Application.¹¹³ Specifically, he testified that White Oak's Facility meets the criteria delineated in § 56-580 D of the Code.¹¹⁴ Further, Mr. Tufaro stated that Staff considered the environmental impact of the generating facilities and associated facilities as provided under § 56-46.1 of the Code.¹¹⁵ Mr. Tufaro affirmed that Staff does not oppose White Oak's request for approval, subject to the resolution of any required transmission network upgrades that may be required by AEP in conjunction with the finalization of an interconnection agreement for the Facility.¹¹⁶ Mr. Tufaro's findings are summarized below in the order presented in his testimony.

Site Description And Control. Mr. Tufaro explained that the Facility would occupy 29 acres of a 126.3-acre parcel located north of State Route 718 and off State Road 1047.¹¹⁷ Mr. Tufaro reported that the site was selected in coordination with the Pittsylvania County Economic Development Corporation and county officials.¹¹⁸ Mr. Tufaro stated White Oak does not currently own the proposed plant site, but has entered into a purchase option to acquire the site.¹¹⁹

System Reliability. Mr. Tufaro testified that White Oak's proposed Facility will interconnect with a transmission line owned by AEP via a 500-foot 138 kV line between the Facility and AEP's transmission line.¹²⁰ AEP will construct, own and maintain all the interconnection resources and White Oak will fund any necessary system upgrades.¹²¹

¹¹¹ *Id.* at 7.

¹¹² *Id.*

¹¹³ Exhibit No. 9, at 5.

¹¹⁴ *Id.* at 13.

¹¹⁵ *Id.* at 5.

¹¹⁶ *Id.* at 13.

¹¹⁷ *Id.* at 5-6.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 6-7.

Mr. Tufaro reported that AEP has completed a system impact study for the Facility, which identified several necessary system reinforcements, which will be funded by White Oak.¹²² Mr. Tufaro discussed another study, currently underway, designed to identify specific system reinforcements and their associated costs.¹²³ Mr. Tufaro stated that White Oak asked AEP to share the results of their system impact study with neighboring utilities to ensure that any potential impacts on their systems are identified and mitigated.¹²⁴

Environmental and Other Permits. Mr. Tufaro reported that White Oak has obtained local zoning approvals from Pittsylvania County, which provide the Company with the right to construct a the Facility without any further zoning or land use approvals.¹²⁵

DEQ coordinated a review by the state and local agencies responsible for permits associated with White Oak's Facility.¹²⁶ The reviewing agencies subsequently submitted comments on the proposed Facility to DEQ's Division of Environmental Enhancement, which summarized the comments in its report to the Staff dated September 12, 2002.¹²⁷

Based on its coordinated review, DEQ recommended a number of conditions over and above the plan preparation, approvals, coordination, permit applications, and other requirements with which compliance is required as a matter of federal, state, or local law or regulation.¹²⁸ Thus Mr. Tufaro advised, "[t]he Commission may consider incorporating these recommendations as conditions of the Certificate."¹²⁹ These conditions were as follows:¹³⁰

- Take precautions to avoid and minimize indirect impacts and temporary impacts to wetlands;
- Conduct field surveys to identify undocumented intermittent and perennial streams;
- Reduce solid waste at the source, re-use it, and recycle it to the maximum extent practicable;
- Coordinate with the Department of Game and Inland Fisheries concerning planting guidelines to enhance wildlife habitat;
- Continue to work with the Department of Historic Resources to develop mitigation measures to address visual and noise impacts on significant architectural resources;
- Follow the principles and practices of pollution prevention to the maximum extent practicable;

¹²² *Id.* at 7.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 8.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 8-9.

¹³⁰ *Id.* at Appendix A at 6-7.

- Limit the use of pesticides and herbicides as recommended; and
- Protect any mature, individual trees that remain on the project site.

Mr. Tufaro asked White Oak to address the DEQ's recommendations in its rebuttal testimony.¹³¹

Experience in Constructing and Operating Electric Generating Facilities. Mr. Tufaro testified that White Oak, as a special purpose entity, has no experience in constructing or operating electric generating facilities.¹³² However, White Oak's parent company, FPL Energy, through its subsidiaries, including Doswell Limited Partnership has substantial experience in constructing and operating electric generating facilities.¹³³ Mr. Tufaro reported FPL Energy has electric generating facilities in operation or under construction in nineteen states, totaling over 10,000 MW of generation, including the 820 MW facility located in Doswell, Virginia.¹³⁴

Fuel. Mr. Tufaro testified White Oak would use natural gas as its primary fuel and low-nitrogen and sulfur fuel oil as a back-up.¹³⁵ Mr. Tufaro described the Lateral as a 3,000-foot, twenty-inch pipeline to be constructed by White Oak and operated by Transco.¹³⁶ It will be located adjacent and parallel to AEP's right-of-way in a fifty-foot wide property owned by Pittsylvania County.¹³⁷ Mr. Tufaro reported that the Lateral will serve no other facilities.¹³⁸ Mr. Tufaro acknowledged the issue raised by Columbia witness Gabehart, but took no position.¹³⁹

Water Supply Arrangements. Mr. Tufaro testified that the Town of Chatham's water treatment facility through the County Authority's water distribution system will provide water for the Facility.¹⁴⁰ Specifically, the County Authority will construct a 16-inch water line, 2.5 miles from the existing distribution system to the Facility.¹⁴¹ Mr. Tufaro confirmed approximately 92,000 gallons per day will be required during gas operation and approximately 188,000 gallons per day will be required during oil operations.¹⁴²

Technical And Economic Viability. According to Mr. Tufaro, the Staff found that White Oak has a well-developed preliminary plan for its proposed Facility and has made substantial progress in obtaining the environmental permits necessary for the Facility.¹⁴³ In addition, Mr. Tufaro stated that because all of the output will be sold to wholesale power markets, the economic

¹³¹ *Id.* at 9.

¹³² *Id.* at 10.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 11.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 12.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 12-13.

viability of the Facility turns on future wholesale prices and the deliverability of the Facility's output to those markets.¹⁴⁴ He observed that, because White Oak bears the financial risk of the proposed Facility, any future uncertainties related to future wholesale prices or deliverability should not affect whether or not White Oak receives a Certificate.¹⁴⁵

2. Mr. Ballsrud's Direct Testimony

Mr. Ballsrud addressed White Oak's organizational structure and its ability to finance construction of the proposed Facility.¹⁴⁶ Mr. Ballsrud testified that he did not oppose White Oak's request for approval, subject to the sunset provision described below, based on the ability of the Facility's owners to bring the proposal to full development.¹⁴⁷

Mr. Ballsrud described White Oak as a Florida-based limited liability company, organized under the laws of Delaware in 2001.¹⁴⁸ Mr. Ballsrud testified that White Oak is a single purpose entity and a wholly owned subsidiary ultimately owned by FPL Group.¹⁴⁹ FPL Group is a publicly-traded company, which also owns FPL, a regulated electric utility with more than four million customer accounts.¹⁵⁰ The chain of ownership is provided below:¹⁵¹

FPL Group
?
FPL Group Capital, Inc.
?
FPL Energy
?
ESI Energy, LLC
?
FPL Energy White Oak, LLC
?
White Oak

Mr. Ballsrud found FPL to have extensive power plant development experience.¹⁵² Included in this experience is its ownership and operation of Doswell.¹⁵³ According to Mr. Ballsrud, in 1992, FPL Group acquired an ownership interest in Doswell, which was then a 650 MW combined-cycle facility located in Hanover County, Virginia.¹⁵⁴ In 2001, FPL Energy

¹⁴⁴ *Id.* at 13.

¹⁴⁵ *Id.*

¹⁴⁶ Exhibit No. 11, at 1.

¹⁴⁷ *Id.* at 9.

¹⁴⁸ *Id.* at 1.

¹⁴⁹ *Id.* at 2.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 2-3.

¹⁵³ *Id.* at 3.

¹⁵⁴ *Id.*

expanded the capacity of Doswell to 820 MW.¹⁵⁵ In addition, in 1997, FPL Group acquired a 40% ownership interest in the 80 MW Multitrade (waste wood) facility located in Virginia.¹⁵⁶

Mr. Ballsrud characterized FPL Energy's expansion plan as financially conservative "slow and steady."¹⁵⁷ FPL Energy strives to have approximately 75% of its capacity under contract or hedged for the next twelve-month period.¹⁵⁸ For example, for 2002, FPL Energy's portfolio was 79% under contract, including 100% of its Virginia capacity.¹⁵⁹ Based on FPL Energy's experience and its progress in mitigating the many risks associated with developing an independent power project, Mr. Ballsrud found FPL Energy to have the necessary experience and knowledge to develop the Facility successfully.¹⁶⁰

Mr. Ballsrud testified that the merchant power industry is "troubled," and "has undergone an almost total meltdown over the past 12 months"¹⁶¹ Several companies operating within the merchant power industry have seen their credit ratings reduced to below or to just above investment grade.¹⁶² As for FPL Group, Mr. Ballsrud pointed out that FPL Group's revenues grew 20% in 2001 to \$8.5 billion and net income increased 11% in 2001 to \$781 million. Though FPL Group was put on watch for a possible downgrade in August 2000, April 2001, and April 2002, by Moody's Investors Services ("Moody's"), in each instance, Moody's affirmed FPL Group's credit rating.¹⁶³ Mr. Ballsrud reported that FPL Group maintains a corporate credit rating of "A" by Standard and Poors ("S&P"), and that FPL Capital has a credit rating of "A" by S&P and "A2" by Moody's.¹⁶⁴ During 2002, FPL Group and its subsidiaries raised approximately \$1.4 billion through the issuance of common stock and Corporate Units. Based on estimates of total development costs of the Facility of \$260 million, Mr. Ballsrud concluded that White Oak's owners have sufficient capacity to finance the Facility should it receive a Certificate from the Commission.¹⁶⁵ However, because of the continued uncertainties of the merchant power market and to help ensure that locations suitable for power projects are not indefinitely dedicated to a specific project if that project is delayed inordinately or terminated, Mr. Ballsrud recommended that any Certificate granted by the Commission in this proceeding include a "sunset provision," giving White Oak two years from the date the Commission grants the Certificate to begin construction.¹⁶⁶

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 4.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 4-5.

¹⁶¹ *Id.* at 5.

¹⁶² *Id.* at 5-6.

¹⁶³ *Id.* at 6.

¹⁶⁴ *Id.* at 6-7.

¹⁶⁵ *Id.* at 8.

¹⁶⁶ *Id.*

3. Mr. Stavrou's Direct Testimony

Mr. Stavrou addressed the economic impacts to be derived from White Oak's proposed Facility.¹⁶⁷

Mr. Stavrou reported that White Oak estimated economic benefits for the Facility, based on comparison to a similar facility built in another state by its parent.¹⁶⁸ White Oak estimated the Facility will be worth about \$260 million after completion and will pay about \$1.2 million in annual property taxes.¹⁶⁹ The Facility will employ ten permanent employees with annual direct labor costs of about \$330,000, and spend about \$38,000 per year on purchases of consumables.¹⁷⁰ During construction, the Facility will employ about 200 workers during the peak of construction, with a local payroll of about \$4.3 to \$10.8 million and purchases of consumables of \$10.4 million. In addition, White Oak estimated that non-resident workers will spend between \$1.6 and \$2.5 million, and the Facility will incur about \$1.0 and \$1.1 million in property taxes and sales and use taxes, respectively, during construction.¹⁷¹

Mr. Stavrou pointed out that White Oak will receive some tax and financial concessions from Pittsylvania County.¹⁷² These incentives include: (i) \$450,000 for building industrial rail and road access to the site; (ii) reimbursement for water and sewer connections; (iii) waiver of building permit fees; and (iv) a refund of one percent of the final investment in the Facility, paid ratably over the first five years of operation, or about \$520,000 per year for five years.¹⁷³

Mr. Stavrou testified that because of the multiplier effect, the total economic benefits derived from the Facility will be greater than the direct benefits described above.¹⁷⁴ Based on this, and considering the concessions granted by the County, Mr. Stavrou found that Pittsylvania County will derive significant economic benefits from the Facility.¹⁷⁵ Mr. Stavrou maintained that Pittsylvania County supported the Facility and pointed to action by the County's Board of Supervisors to change zoning on the site to allow the construction and operation of a power plant and the County's agreement to sell water to the Facility.¹⁷⁶

Mr. Stavrou testified that the Facility will operate as a merchant plant, adding approximately 680 MW of generating capacity to the APCO service area.¹⁷⁷ Mr. Stavrou observed that the addition of capacity not owned by an incumbent utility is, in general, a desirable

¹⁶⁷ Exhibit No. 12, at 2.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 3.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 4.

¹⁷⁷ *Id.*

outcome.¹⁷⁸ However, Mr. Stavrou noted that because White Oak likely would use a “tolling” agreement to sell the Facility’s output to a public utility or power purchaser, there is uncertainty regarding the market power issue.¹⁷⁹ Consequently, Mr. Stavrou asked that the Commission direct White Oak to report the name and corporate affiliation of any company entering a tolling agreement for the Facility.¹⁸⁰

In summary, Mr. Stavrou concluded that, from the viewpoint of economic development and growth, and the promotion of a more competitive electric power industry in Virginia, the Facility appears to be reasonable and in the public interest.¹⁸¹ Accordingly, Mr. Stavrou did not oppose White Oak’s request for approval to construct the proposed Facility.¹⁸²

E. White Oak’s Rebuttal Testimony

White Oak prefiled rebuttal testimony for three witnesses: Mr. DiDonato, Ms. Linkiewicz, and Mr. Cifone. Their rebuttal testimonies are summarized below.

1. Mr. DiDonato’s Rebuttal Testimony

Mr. DiDonato (i) clarified the length and location of the Lateral that will connect with Transco; (ii) discussed changes to the timetable for the Facility; (iii) explained White Oak’s payment responsibility for interconnection with the County’s water system; and (iv) responded to some of Staff’s recommendations.¹⁸³

Mr. DiDonato stated the Lateral will be about 3,000 feet in length, with approximately 1,500 feet on property owned by White Oak and 1,500 feet on a right-of-way to be obtained from Pittsylvania County, which will be adjacent to and parallel to the AEP transmission line.¹⁸⁴

Mr. DiDonato acknowledged media reports suggesting that FPL will stop building non-wind power plants, but offered assurance that White Oak does still intend to construct the Facility.¹⁸⁵ In addition, Mr. DiDonato revised the timetable for the Facility to reflect a projected operation date of June 2005, with construction to begin by the end of 2003, which is within the eighteen-month time limit of the State Air Pollution Control permit issued on August 29, 2002.¹⁸⁶

Mr. DiDonato testified that White Oak will pay for the cost to construct the water interconnection.¹⁸⁷ However, Mr. DiDonato explained that the reimbursement White Oak would

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 5.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Exhibit No. 2.

¹⁸⁴ *Id.* at 1-2.

¹⁸⁵ *Id.* at 2.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 3.

receive for water and sewer connection fees concerned only minor fees that are typically collected by the Water Authority to set up a customer's account.¹⁸⁸ Mr. DiDonato noted that Mr. Stavrou otherwise correctly summarized the incentives given by the County and accepted by White Oak.¹⁸⁹

Mr. DiDonato accepted Staff's recommendation that White Oak report to the Commission the name and corporate affiliation of any company with which it may enter a tolling agreement.¹⁹⁰ Finally, Mr. DiDonato responded to Staff witness Tufaro's concerns about system reliability by providing a status report on the System Impact Study performed by AEP and reporting that White Oak agrees to fund any necessary upgrades.¹⁹¹

2. Ms. Linkiewicz's Rebuttal Testimony

Ms. Linkiewicz advised that White Oak agreed with and would comply with all of the recommendations proposed by the DEQ and filed in Staff witness Tufaro's direct testimony.¹⁹² Ms. Linkiewicz reported that on August 29, 2002, White Oak received a permit from the State Air Pollution and Control Board to construct and operate the Facility.¹⁹³ Finally, Ms. Linkiewicz testified White Oak intends to treat the water used in the plant by demineralization rather than reverse osmosis as stated in its application.¹⁹⁴

3. Mr. Cifone's Rebuttal Testimony

Mr. Cifone corrected the direct testimony of Company witness Sheehan, which Mr. Cifone adopted, to reflect the new expected operation date for the Facility of June 2005, and White Oak's plans to use an electric air cooler, which uses no water for auxiliary cooling, instead of a wet surface to air cooler.¹⁹⁵ In addition, Mr. Cifone disclosed White Oak may build three detention ponds rather than two, depending upon the requirements of the erosion and sediment control plan and the Company's stormwater discharge permit.¹⁹⁶

DISCUSSION

This case presents two broad issues. The first issue is whether the Commission should issue a Certificate to construct and operate the Facility. The second issue concerns Columbia's contentions regarding the Lateral. These issues are discussed separately below.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Exhibit No. 5, at 3.

¹⁹³ *Id.* at 3-4, Attached Exhibits BL-2 and BL-3.

¹⁹⁴ *Id.* at 3.

¹⁹⁵ Exhibit No. 7, at 2.

¹⁹⁶ *Id.*

I. CERTIFICATE

Virginia Code § 56-580 D provides as follows:

The Commission shall permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. . . .

In addition, § 56-46.1 A requires that the Commission:

shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority

of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. . . . In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 *et seq.*) of Chapter 22 of Title 15.2. Additionally, the Commission (i) shall consider the effect of the proposed facility on economic development within the Commonwealth and (ii) shall consider any improvements in service reliability that may result from the construction of such facility.

Finally, § 56-596 A requires that: “[i]n all relevant proceedings pursuant to this Act, the Commission shall take into consideration, among other things, the goals of advancement of competition and economic development in the Commonwealth.”

In its Final Order in *CPV Cunningham Creek LLC*,¹⁹⁷ the Commission found that the Code of Virginia establishes six general criteria, or areas of analysis, that apply to an electric generating plant application, including: (i) reliability, (ii) competition, (iii) rates, (iv) environment, (v) economic development, and (vi) public interest.¹⁹⁸ Each of these criteria is analyzed below.

A. Reliability

Among other things, § 56-580 D requires that a proposed generating facility “have no material adverse effect upon reliability of electric service provided by any regulated public utility.” Likewise, § 56-46.1 A directs the Commission to consider “any improvements in service reliability that may result from the construction of such facility.”

The proposed Facility will interconnect on-site with an existing transmission line owned by AEP.¹⁹⁹ White Oak witness DiDonato provided a copy of the August 2002, status report of AEP’s Facilities Study to identify specific system reinforcements and their associated costs.²⁰⁰ The August 2002, status report shows that AEP has completed tasks associated with project initiation, review and analysis of existing data, and development of preliminary alternatives.²⁰¹

¹⁹⁷ *Application of CPV Cunningham Creek LLC, For approval of a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2, for an exemption from Chapter 10 of Title 56, and for the interim authority to make financial expenditures*, Case No. PUE-2001-00477, Final Order (October 7, 2002) (“*CPV Cunningham Creek*”).

¹⁹⁸ *Id.* at 6-7.

¹⁹⁹ Exhibit No. 6, at 3.

²⁰⁰ Exhibit No. 2, at 3.

²⁰¹ *Id.* Attached Exhibit JD-7.

In addition, AEP completed a substantial portion of a task titled: Field Verification and Route Refinement.²⁰² Remaining tasks included: public workshop, rank and compare alternatives, prepare study report, and develop and file application with the Commission.²⁰³ Mr. DiDonato stressed that White Oak agrees to fund any necessary upgrades.²⁰⁴ During the hearing, Staff witness Tufaro offered the following assessment of the impact of the Facility on system reliability:

I've been generally satisfied . . . the Applicant is still at a point where they don't have that last piece of paper, and until they have that last piece of paper, you still have to have a concern about it. But it seems like . . . once that stage is reached, that concern goes away. But I still have a concern, but it seems like it's been adequately addressed.²⁰⁵

Based on the record, and White Oak's commitment to fund any necessary system upgrades, I find that White Oak has demonstrated that its proposed Facility will have no material adverse effect upon the reliability of electric service provided by any regulated public utility. To eliminate any lingering concerns from Staff, I recommend that the Commission condition the Certificate to reflect White Oak's commitment to fund any necessary system upgrades.

B. Competition

Section 56-596 A requires that in all relevant proceedings pursuant to the Virginia Electric Utility Restructuring Act, which includes § 56-580, "the Commission shall take into consideration, among other things, the goals of advancement of competition"

Staff witness Stavrou testified that this Facility will operate as a merchant plant and will add 680 MW of capacity in the APCO service area.²⁰⁶ Based on a finding that a positive correlation exists between market power and the ownership of generating capacity, Mr. Stavrou explained that competition is benefited by the construction and operation of generation that is owned or controlled by a company other than an incumbent electric utility.²⁰⁷ Mr. Stavrou concluded that from the point of view of the promotion of a more competitive electric power industry in Virginia, the Facility appears reasonable and in the public interest.²⁰⁸

However, Mr. Stavrou noted that White Oak's expected use of a "tolling" agreement to sell the Facility's output to an unspecified public utility or power purchaser introduces uncertainty into the market power issue.²⁰⁹ In addition, Mr. Stavrou expressed concern that

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* at 3.

²⁰⁵ Tufaro, Tr. at 107.

²⁰⁶ Exhibit No. 12, at 4.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 5.

²⁰⁹ *Id.* at 4.

certain aspects of the electric power industry make it possible for some firms to have market power even if they do not control a large amount of capacity in a region.²¹⁰ For these reasons, Mr. Stavrou recommended the Commission require White Oak to report to the Commission the name and corporate affiliation of any company entering a tolling agreement for the Facility.²¹¹ White Oak agreed to report such information to the Commission.²¹²

Based on the record, I find that the Facility advances the goals of electric competition in the Commonwealth.

C. Rates

Section 56-580 D directs the Commission to permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities “are not otherwise contrary to the public interest.” The Commission has interpreted this requirement to include consideration of the impact of a proposed facility on the rates paid by “customers of any regulated public utility service in the Commonwealth, including water service, gas distribution service, electric distribution service, and electric transmission service.”²¹³ Consequently, ¶ 14 of 20 VAC 5-302-20 instructs applicants seeking Commission approval of electric generating facilities to include “an analysis of any reasonably known impacts the proposed facility may have upon . . . rates paid by, customers of any regulated public utility for service in the Commonwealth, including water service, gas distribution service, electric distribution service, and electric transmission service.”

There is nothing in the record to suggest that this Facility will have an adverse effect on the rates of any Virginia regulated utility. As discussed above, White Oak will bear the cost of any system improvements required for interconnection with AEP.²¹⁴ Thus, I find there will be no adverse impact on the rates of any Virginia regulated electric public utility. The possible impact of the proposed Facility on any regulated natural gas public utility will be addressed in the discussion of the Lateral.

Staff witness Tufaro confirmed that water for the Facility will be provided by the Town of Chatham’s water treatment facility through the County Authority’s water distribution system.²¹⁵ Company witness DiDonato explained that White Oak will pay for the cost to construct the water interconnection.²¹⁶

²¹⁰ *Id.* at 4-5.

²¹¹ *Id.* at 5.

²¹² Exhibit No. 2, at 3.

²¹³ *Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities*, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice at 6 (December 14, 2001).

²¹⁴ Exhibit No. 2, at 3.

²¹⁵ Exhibit No. 9, at 13.

²¹⁶ Exhibit No. 2, at 3.

Staff witness Tufaro reviewed the impact of the proposed Facility on rates and concluded that the project generally meets the criteria set forth in § 56-580 D.²¹⁷ Mr. Tufaro did not recommend the adoption of any conditions related to the Facility's water or wastewater requirements. Therefore, I find that based on the record, the proposed Facility will have no adverse impact on the rates of any Virginia utility. Once again, this finding does not include the analysis of the Lateral, which is provided below.

D. Environment

Sections 56-580 D and 56-46.1 A direct the Commission to give consideration to the effect of the proposed Facility "on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact." However, the 2002 General Assembly passed legislation ("SB 554") to amend §§ 56-580 D and 56-46.1 to avoid duplication of efforts by governmental agencies by adding the following language:

In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters.

In *CPV Cunningham Creek LLC*, the Commission granted a Certificate to construct and operate a proposed 520 MW facility based on the filing of a permit issued by the DEQ in accordance with the provisions of the Commonwealth of Virginia State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.²¹⁸ In this case, DEQ reported that on August 9, 2002, its South Central Regional Office approved a permit for White Oak's Facility that combines the requirements of a Prevention of Significant Deterioration ("PSD") permit with the preconstruction permit requirements of the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution.²¹⁹

In addition, in response to concern expressed by the Commission in other cases, White Oak provided an analysis of the cumulative impact of the proposed project combined with all other existing and proposed electric generation facilities on the air quality in and around

²¹⁷ Exhibit No. 9, at 12.

²¹⁸ *CPV Cunningham Creek* at 7-8.

²¹⁹ Exhibit No. 9, Appendix A, Comments of the DEQ at 3.

Pittsylvania County.²²⁰ The cumulative air impacts study modeled White Oak and twenty-two other electric generating facilities that had submitted air permit applications as of March 11, 2002.²²¹ The model addressed all of the pollutants for which the EPA has defined National Ambient Air Quality Standards (“NAAQS”), except ozone.²²² White Oak summarized the results as follows:

The results of the cumulative impact analysis for the criteria pollutants demonstrate that the total incremental increase in ambient pollutant concentrations associated with the proposed emissions from [White Oak], when added to the other 22 electric generating facilities, will not exceed allowable PSD increments. In addition, when the total predicted maximum incremental increases are added to monitored ambient background concentrations, the cumulative impact of all of the 23 recently permitted and proposed electric generating facilities will not cause or contribute to a violation of the NAAQS. . . .

The maximum predicted combined impacts of all of the recently permitted and proposed electric generating facilities are less than the [Significant Impact Levels] except for the PM₁₀ 24-hr concentration. The contribution of emissions from [White Oak] to this predicted maximum PM₁₀ is negligible. The short-term PSD increments and NAAQS allow for one exceedance per year, therefore the highest-second-high (H2H) modeled concentrations are used when making comparisons with these short-term thresholds. The combined modeled impacts are all less than the applicable PSD increment.²²³

In a recent decision, the Commission considered a letter filed by the DEQ pursuant to § 10.1-1186.2:1 C concerning information about environmental issues identified during its review process.²²⁴ Among other things, the DEQ letter explained that all issues identified during the DEQ review process were addressed in the DEQ report. The DEQ letter further explained that two of its recommendations were within the authority of a permitting agency.²²⁵ The Commission found that the DEQ report satisfied the Commission’s environmental inquiry.²²⁶ Thus, the Commission conditioned its grant of a Certificate on compliance with the

²²⁰ Application Appendix A, Section 4.2.10.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Application of Old Dominion Electric Cooperative For approval of a certificate of public convenience and necessity for electric generating facilities*, Case No. PUE-2002-00003, Final Order at 8 (November 6, 2002) (“ODEC”).

²²⁵ *Id.*

²²⁶ *Id.* at 11.

recommendations made by the DEQ in its report, except for two recommendations that were within the authority of, and being considered by, the permitting agency.²²⁷

In this case, in regard to the recommendations made by the DEQ, White Oak witness Linkiewicz stated: “White Oak agrees, as part of its application, to comply with all the recommendations proposed by the DEQ [and reflected in Staff witness Tufaro’s testimony].”²²⁸ Moreover, as in *ODEC*, Staff requested clarification from the DEQ concerning whether any of its recommendations were within the authority of a permitting agency. During the hearing, Exhibit No. 10 was reserved for a DEQ letter of clarification. DEQ’s letter was submitted by Staff on January 14, 2003.²²⁹ According to this letter, all of the recommendations included in DEQ’s comments and agreed to by White Oak pertain to matters governed by permits.²³⁰ The letter listed these recommendations:²³¹

- Take precautions to avoid and minimize indirect impacts and temporary impacts to wetlands;
- Conduct field surveys to identify undocumented intermittent and perennial streams;
- Reduce solid waste at the source, re-use it, and recycle it to the maximum extent practicable;
- Coordinate with the Department of Game and Inland Fisheries concerning planting guidelines to enhance wildlife habitat;
- Continue to work with the Department of Historic Resources to develop mitigation measures to address visual and noise impacts on significant architectural resources;
- Follow the principles and practices of pollution prevention to the maximum extent practicable;
- Limit the use of pesticides and herbicides as recommended; and
- Protect any mature, individual trees that remain on the project site.

Based on the record, White Oak’s agreement to implement DEQ’s recommendations as a condition for its Certificate from this Commission, and DEQ’s clarification, I find that the Facility will have no material adverse effect on any threatened or endangered plant or animal species, any wetlands, air quality, water resources, or the environment generally. However, because DEQ’s recommendations appear to fall outside the permitting process, I find that any Certificate granted by the Commission should be conditioned to reflect DEQ’s recommendations.

²²⁷ *Id.* at 11-12.

²²⁸ Exhibit No. 5, at 3.

²²⁹ Lee, Tr. at 108.

²³⁰ Exhibit No. 10.

²³¹ *Id.*

E. Economic Development

Section 56-46.1 A directs the Commission to consider the effects of the proposed Facility on economic development within the Commonwealth. In addition, § 56-596 A requires the Commission to take into consideration, among other things, economic development in the Commonwealth.

William Sleeper, county administrator for Pittsylvania County, testified that the Facility was consistent with the County's plans for the landfill upon which the Facility will be built.²³² Company witness DiDonato quantified the benefits of the Facility to Pittsylvania County as: (i) \$1.2 million in local property tax and other revenue; (ii) approximately 200 temporary construction jobs, contributing \$6 to \$7 million to local and regional economies during construction; and (iii) approximately seven to ten full-time jobs.²³³ In addition, Mr. DiDonato stated that White Oak "would encourage [its contractor] to use as much local trade and talent as they possibly can"²³⁴

Staff witness Stavrou confirmed the Facility would have positive net economic benefits for Pittsylvania County; White Oak will pay about \$1.2 million in annual property taxes.²³⁵ In addition, Mr. Stavrou estimated that the Facility will have an annual direct payroll of \$330,000, and spend about \$38,000 per year on purchases of consumables.²³⁶ Mr. Stavrou calculated that during construction, the Facility will have a payroll of about \$4.3 to \$10.8 million and purchase consumables of \$10.4 million.²³⁷ Mr. Stavrou noted that non-resident construction workers that receive per diem expense payments will spend between \$1.6 and \$2.5 million, locally.²³⁸ In addition, Mr. Stavrou reported that property taxes and use taxes collected during construction will be about \$1.0 and \$1.1 million, respectively.²³⁹ Mr. Stavrou listed the concessions offered by Pittsylvania County to White Oak as follows: (i) \$450,000 for building industrial rail and road access to the site; (ii) reimbursement for water and sewer connections; (iii) a waiver of building permit fees; and (iv) a refund of one percent of the final investment in the Facility, paid ratably over the first five years of operation, or about \$520,000 per year for five years.²⁴⁰ Based on the total economic benefits and the concessions granted by the County, Mr. Stavrou concluded that Pittsylvania County will derive significant economic benefits from the Facility.²⁴¹

Based on this record, I find the Facility will have a positive impact on the economy of Pittsylvania County.

²³² Sleeper, Tr. at 20-21.

²³³ Exhibit No. 1, at 6-7, Attached Exhibit JD-2, at 12.

²³⁴ DiDonato, Tr. at 27.

²³⁵ Exhibit No. 12, at 2.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.* at 3.

²⁴¹ *Id.* at 4.

F. Public Interest

Section 56-580 D directs the Commission to “permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities . . . (ii) are not otherwise contrary to the public interest.”

In this case, no public witnesses opposed the Facility. Indeed, with the exception of Columbia’s issue regarding the Lateral, there was no opposition to the Facility.

Staff witness Ballsrud reviewed White Oak’s financing options and the general state of the merchant power generation industry and recommended that any Certificate approved by the Commission in this proceeding include a “sunset provision,” allowing the Company two years from the date of the Commission order granting the Certificate, to begin construction.²⁴² In addition, Staff recommended that the Commission require White Oak to report to the Clerk of the Commission the name and corporate affiliation of any company entering a tolling agreement for the Facility.²⁴³ On rebuttal, White Oak agreed to Staff’s “tolling” recommendation and did not oppose Staff’s “sunset” recommendation.²⁴⁴

Therefore, based on the record in this case, I find that the construction and operation of the Facility will not be contrary to the public interest.

II. LATERAL

In its brief, Columbia explained that it did not oppose the certification of White Oak’s electric generation facility, but contended certification of the Lateral is subject to the provisions of the Utility Facilities Act²⁴⁵ rather than the Virginia Electric Utility Restructuring Act,²⁴⁶ or more specifically, § 56-580 D.²⁴⁷ Columbia argued that White Oak failed to provide the necessary public notices of its request for approval of the Lateral.²⁴⁸ In addition, Columbia argued regardless of the governing statute, White Oak failed to satisfy its statutory burden with respect to the Lateral.²⁴⁹

White Oak countered that the Utilities Facilities Act does not apply to its application.²⁵⁰ Moreover, White Oak asserted that its application “seeks Commission approval to construct and operate a 680 MW peaking, electrical power generation facility and related piping”²⁵¹ Further, White Oak maintained that its application and the inclusion of references to the Lateral

²⁴² Exhibit No. 11, at 8.

²⁴³ Exhibit No. 12, at 4-5.

²⁴⁴ Exhibit No. 2, at 3.

²⁴⁵ Virginia Code § 56-265.1 *et seq.*

²⁴⁶ Virginia Code § 56-576 *et seq.*

²⁴⁷ Columbia Brief at 1, 3-13.

²⁴⁸ *Id.* at 2, 28-30.

²⁴⁹ *Id.* at 1-2, 14-28.

²⁵⁰ White Oak Brief at 2-3.

²⁵¹ *Id.* at 4 (quoting Application at 1, emphasis added in the Brief).

(i.e., to related piping), complies with the requirements of § 56-580 D. If the Commission finds White Oak's application fails to provide specific required information, the Company recommended that the Commission condition the Certificate appropriately.²⁵² Finally, White Oak stated that "to the extent any additional review of the pipeline may be necessary, the Company requests the Hearing Examiner to recommend approval of the remainder of the project and further proceedings related to the lateral pipeline only."²⁵³

On brief, Staff was unable to offer any support for White Oak's position concerning the Lateral.²⁵⁴

Thus the discussion of the issues related to the Lateral will consist of four parts. First, a determination will be made regarding whether certification of the Lateral is governed by the Utility Facilities Act or the Virginia Electric Utility Restructuring Act. Second, the request for certification of the Lateral will be evaluated under the Utilities Facilities Act. Third, the request for certification of the Lateral will be evaluated pursuant to § 56-580 D of the Virginia Electric Utility Restructuring Act. Finally, the sufficiency of notice will be addressed.

A. Applicable Statutory Requirements

All parties agreed that for electric generating facilities, the Virginia Electric Utility Restructuring Act supersedes the Utility Facilities Act.²⁵⁵ Nonetheless, Columbia argued that the Lateral is an intrastate natural gas pipeline facility, governed by the Utility Facilities Act.²⁵⁶ As Staff stated the issue, "is § 56-580 D a big enough statutory tent to include the lateral pipeline White Oak intends to construct, own and operate?"²⁵⁷

In *Virginia Power-Chesterfield Lateral*²⁵⁸ the Commission required and granted a Certificate pursuant to § 56-265.2 to construct and operate a natural gas pipeline lateral.²⁵⁹ Though the length of the lateral in *Virginia Power-Chesterfield Lateral* was approximately sixteen miles, at one point in the case, the utility believed that the required length of the lateral it would own would be about 2100 feet, and thus sought a ruling on whether a Certificate was

²⁵² *Id.* at 5-6.

²⁵³ *Id.* at 7.

²⁵⁴ Staff Brief at 8.

²⁵⁵ White Oak Brief at 2-3; Columbia Brief at 6; Staff Brief at 6-7.

²⁵⁶ Columbia Brief at 5-6.

²⁵⁷ Staff Brief at 5.

²⁵⁸ *Application of Virginia Electric and Power Company, For a certificate of public convenience and necessity to construct a lateral pipeline*, Case No. PUE-1987-00093, 1991 S.C.C. Ann. Rep. 254 ("Virginia Power-Chesterfield Lateral").

²⁵⁹ *Id.* at 256.

required.²⁶⁰ The Hearing Examiner in that case looked to the underlying purpose of the facility and the language of § 56-265.2 and concluded that a Certificate was required for the project.²⁶¹

Virginia Power-Chesterfield Lateral establishes the need for a Certificate to construct a lateral pipeline to serve an electric generation facility. However, at the time *Virginia Power-Chesterfield Lateral* was decided, the structure of § 56-265.2 made it difficult to distinguish whether the Certificate was under the Commission's authority to certificate electric facilities or under the Commission's authority to certificate natural gas facilities. That is, § 56-265.2 did not make a distinction between electric and gas facilities. In 1995, § 56-265.2 was amended to include specific provisions for natural gas facilities, including § 56-265.2 C and § 56-265.2:1.²⁶² Consequently, in later cases, the Commission explicitly approved Certificates for natural gas laterals pursuant to its natural gas authority. For example, in *Chesapeake Cogeneration*²⁶³ Virginia Power was required to seek separate Certificates, one for the electric generating facility pursuant to § 56-261.2, and one for the natural gas lateral pursuant to § 56-265.2:1. Similarly, the Commission exercised its authority to certificate a natural gas lateral as a natural gas facility pursuant to the Utility Facilities Act, including § 56-265.2:1 in *Virginia Power-Possum Point Pipeline*.²⁶⁴

In its brief, White Oak pointed to *Filing Requirements*²⁶⁵ and *Tenaska*²⁶⁶ in support of the contention that the § 56-580 D supplants §§ 56-234.3 and 56-265.2.²⁶⁷ However, in both cases, §§ 56-234.3 and 56-265.2 are supplanted only in relation to electric generating facilities. Indeed, in the Commission's August 3, 2001, Order in Case No. PUE-2001-00313, the Commission was careful to note:

²⁶⁰ *Application of Virginia Electric and Power Company, For a certificate of public convenience and necessity to construct a lateral pipeline*, Case No. PUE-1987-00093, Hearing Examiner's Ruling at 1 (June 8, 1989) ("June 1989 Examiner's Ruling").

²⁶¹ *Id.* at 4-6.

²⁶² 1995 Va. Acts 311.

²⁶³ *Application of Virginia Electric and Power Company et al., For issuance of Certificates of Public Convenience and Necessity Pursuant to Va. Code § 56-265.2 and related regulatory approvals*, Case No. PUE-1995-00131, 1997 S.C.C. Ann. Rep. 349 ("Chesapeake Cogeneration") vacated when the project was canceled 1998 S.C.C. Ann. Rep. 320.

²⁶⁴ *Application of Virginia Electric and Power Company, For a certificate of public convenience and necessity under the Utility Facilities Act to develop, construct, own, and operate an intrastate natural gas pipeline*, Case No. PUE-2000-00741, 2001 S.C.C. Ann. Rep. 495 ("Virginia Power-Possum Point Pipeline").

²⁶⁵ *Commonwealth of Virginia, at the relation of the State Corporation Commission, Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities*, Case Nos. PUE-2001-00313 and PUE-2001-00665, 2001 S.C.C. Ann. Rep. 585 ("Filing Requirements").

²⁶⁶ *Application of Tenaska Virginia Partners, L.P., For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00039, Final Order (April 19, 2002) ("Tenaska").

²⁶⁷ White Oak Brief at 3.

While we find that § 56-265.2 is superseded by § 56-580 D as the former applies to the construction and operation of electrical generating facilities and associated facilities, § 56-265.2 includes provisions applicable to other facilities such as transmission and distribution facilities, and those provisions are not disturbed.²⁶⁸

If the requirements of § 56-265.2 remain for electric transmission and distribution facilities, they remain for natural gas facilities. Natural gas facilities are further removed from electric generation than electric transmission and distribution. Moreover, § 56-265.2, along with the addition of § 56-265.2:1 represents a well-developed set of legislative mandates concerning the construction of natural gas facilities. It is unlikely that the General Assembly would repeal these provisions without an explicit reference. Indeed, the language of the Virginia Electric Utility Restructuring Act, especially § 56-577 A 3, limits its reach to the “generation of electric energy.” Consequently, in cases subsequent to the enactment § 56-580 D, natural gas laterals have either been completely on-site as in *Tenaska*,²⁶⁹ or have been constructed, owned, and operated by the interstate natural gas pipeline or the local natural gas distribution company.²⁷⁰ Therefore, I find construction of the 1500-foot off-site portion of the Lateral to be subject to the requirements of the Utility Facilities Act, including, §§ 56-265.2 and 56-265.2:1.

B. Application of the Utility Facilities Act

Section 56:265.2:1 A directs the Commission to examine the effect of proposed natural gas facilities on the environment, public safety, and economic development:

Whenever a certificate is required pursuant to § 56-265.2 for the construction of a pipeline for the transmission . . . natural gas, the Commission shall consider the effect of the pipeline on the environment, public safety, and economic development in the Commonwealth, and may establish such reasonably practical

²⁶⁸ *Commonwealth of Virginia, at the relation of the State Corporation Commission, Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities*, Case No. PUE-2001-00313, Order, at n.7 (August 3, 2001).

²⁶⁹ *See Application of Tenaska Virginia Partners, L.P., For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00039, Report of Michael D. Thomas, Hearing Examiner, at n.1 (October 23, 2001); *Application of CPV Cunningham Creek LLC, For approval of a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2, for an exemption from Chapter 10 of Title 56, and for the interim authority to make financial expenditures*, Case No. PUE-2001-00477, Report of Deborah V. Ellenberg, Chief Hearing Examiner, at 10 (August 7, 2002).

²⁷⁰ *See Application of Old Dominion Electric Cooperative, For a certificate of public convenience and necessity for electric generating facilities in Fauquier County*, Case No. PUE-2002-00003, Report of Michael D. Thomas, Hearing Examiner, at 36-37 (August 22, 2002).

conditions as may be necessary to minimize any adverse environmental or public safety impact. In such proceedings, the Commission shall receive and consider all reports by state agencies concerned with environmental protection; and, if requested by any county or municipality in which the pipeline is proposed to be constructed, local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2.

In addition to the explicit statutory considerations of § 56-265.2:1 A, when considering a certificate for natural gas facilities under the Utility Facilities Act, the Commission has examined: (i) whether there was a need for the additional service within the time frame contemplated; (ii) whether the cost estimates, choice of technology, construction plans and proposed manner of carrying out the project were reasonable; and (iii) whether there were suitable alternatives to the proposed construction.²⁷¹ Each of these requirements is examined below.

1. Environment

On brief, White Oak pointed out that the environmental impact of the Lateral is included, generally in Appendix A to its Application.²⁷² The only specific reference to the Lateral is as follows:

White Oak Power Company will minimize impacts to the wetlands for natural [gas] pipeline extension construction. The preferred pipeline routing is from the Transco Williams pipeline (0.3 miles north of the site) within a corridor on the eastern edge of the existing AEP transmission corridor. The estimated wetland impacts will be less than 0.5 acres, thereby qualifying for a nationwide permit from the ACOE and/or a general permit from the [DEQ]. Impacts to White Oak Creek will be avoided by use of directional drilling and installation of the pipeline beneath the creek.²⁷³

In addition, White Oak further noted that the Company stated in its Application's environmental impact assessment: "installation of [the Lateral] will be conducted in accordance with Army Corp of Engineers and state requirements."²⁷⁴ Finally, White Oak argued that to the extent it failed to identify any required permits and approvals for the Lateral, such omission could be corrected by a provision in Commission's final order requiring the Company to file such permits and approvals with the Commission as a condition of the Certificate.²⁷⁵

²⁷¹ *Virginia Power-Possum Point Pipeline* at 497.

²⁷² White Oak Brief at 5.

²⁷³ Application Appendix A Section 4.7.

²⁷⁴ Application at 18.

²⁷⁵ White Oak Brief at 5-6.

Columbia acknowledged that White Oak's Environmental Review made limited references to the Lateral, but asserted that the Environmental Review is limited in scope to the generating facility and associated facilities that are located on a 126.3-acre site.²⁷⁶ Indeed, the Lateral is not depicted on the large, detailed conceptual site layout.²⁷⁷ More importantly, Columbia showed that DEQ's coordinated review in this case excludes the entire length of the Lateral, including the on-site portion.

The analysis provided does not address the impacts associated with the 2.5-mile water pipeline to be constructed by the Pittsylvania County Service Authority, or the construction of the approximately ½-mile underground pipeline bringing natural gas from the Transco natural gas system to the site. Also, impacts associated with the construction of the pipelines within the 126.3-acre site are not included in this analysis.²⁷⁸

In *Virginia Power-Possum Point Pipeline* the Commission emphasized the importance of the environmental review for natural gas pipeline facilities.

Construction of the pipeline lateral is a major undertaking and may have significant impacts on the environment if proper precautions are not undertaken. Accordingly, we will direct the Division to monitor the Company's compliance with the conditions set out in the Stipulation and the DEQ coordinated review.²⁷⁹

In this case, little evidence has been presented on the environmental impact of the Lateral. There is no DEQ coordinated review. The Lateral does not appear on the conceptual site layout, which is drawn to the scale of one-inch equals one hundred feet.²⁸⁰ In summary, I find that White Oak failed to provide sufficient evidence to make a determination of the environmental impact of the Lateral.

2. Public Safety

Columbia argued White Oak failed to address the public safety issues related to the Lateral.²⁸¹ Columbia highlighted that at the hearing, White Oak witness DiDonato, the project manager, was unaware that U.S. Department of Transportation regulations implementing the Natural Gas Pipeline Safety Act would govern the design, construction, operation, and maintenance of the Lateral, and that White Oak witness Cifone, the technical development

²⁷⁶ Columbia Brief at 22; Linkiewicz, Tr. at 58-63.

²⁷⁷ Application Appendix A Attachment 2; Linkiewicz, Tr. at 63.

²⁷⁸ Exhibit No. 9, Appendix A.

²⁷⁹ *Virginia Power-Possum Point Pipeline* at 498.

²⁸⁰ Application Appendix A Attachment 2.

²⁸¹ Columbia Brief at 18.

manager, was also unaware of those safety regulations.²⁸² In addition, Columbia maintained the location of the Lateral near an AEP electric transmission line increases public safety concerns.²⁸³ Finally, Columbia listed several other public safety related rules and regulations that White Oak failed to address in this case, including the Underground Utility Damage Prevention Act and Rules for Enforcement of the Underground Utility Damage Prevention Act.²⁸⁴

White Oak responded that it has pledged to comply with all applicable laws and regulations and that specific references to applicable laws and regulations in the Commission's final order "should adequately address this issue."²⁸⁵

I disagree. For the Commission to make the determinations required under the Utilities Facilities Act related to public safety, an application must contain more than what amounts to a promise to abide by the applicable rules and regulations, whatever they happen to be. Put simply, White Oak has failed to address the public safety issues related to the Lateral.

3. Economic Development

Columbia did not question the Lateral's impact on economic development.²⁸⁶ The nexus between the Lateral and the overall project means that the economic analysis used for the Facility is applicable to the Lateral.

4. Need

Similar to the previous section, Columbia did not question the need for the Lateral.²⁸⁷ Columbia has not suggested that it could serve the proposed Facility from its existing distribution system. Put simply, if the Facility is certificated, then there is a need for the Lateral.

5. Cost, Technology, and Plans

White Oak's Application and testimony fail to provide an estimate of the cost of the Lateral, technical specifications for the Lateral, or construction plans for the Lateral. As discussed above, White Oak failed to include the Lateral in its detailed conceptual site layout.²⁸⁸ White Oak witness Cifone admitted on cross-examination that White Oak failed to include the Lateral in its description of all major systems, facility configuration, and expected suppliers of major components.²⁸⁹ In addition, Mr. Cifone admitted that White Oak has failed to provide: (i) the maximum allowable operating pressure of the Lateral;²⁹⁰ (ii) the delivery pressure of the

²⁸² *Id.*; See DiDonato, Tr. at 34-35; Cifone, Tr. at 75.

²⁸³ Columbia Brief at 19.

²⁸⁴ *Id.* at 19-20.

²⁸⁵ White Oak Brief at 5-6.

²⁸⁶ Columbia Brief at 26.

²⁸⁷ *Id.* at 14.

²⁸⁸ See Application Appendix A Attachment 2.

²⁸⁹ Cifone, Tr. at 70-72.

²⁹⁰ *Id.* at 75.

Lateral;²⁹¹ (iii) standards for construction of the Lateral;²⁹² (iv) design, specifications, and other material to be used for the Lateral;²⁹³ (v) procedures to be followed during construction;²⁹⁴ and (vi) design of any required alternating current mitigation system.²⁹⁵ Therefore, I find that White Oak has failed to provide the required cost, technology, and planning information necessary to support the granting of a Certificate pursuant to the Utility Facilities Act.

6. Alternatives

Just as White Oak has failed to address cost, technology, and plans, I find the Company failed to address alternatives regarding the Lateral in its Application.

Therefore, based on the above discussion, I find that White Oak has failed to provide adequate support for the issuance of a Certificate for the Lateral. The record in this proceeding does not contain the information necessary for the Commission to grant a Certificate for the Lateral pursuant to the Utility Facilities Act.

C. Application of § 56-580 D

If the Commission disagrees with the statutory analysis presented above and follows White Oak's position that the Lateral is subject to § 56-580 D, two issues remain. The first issue is whether the Lateral should be considered separately from the Facility. The second issue is whether to distinguish between construction of the Lateral on and off the proposed site. The Commission has decided neither of these issues in relation to § 56-580 D.

In its Brief, White Oak stressed that its Application is to construct and electrical generating facility and *related piping*.²⁹⁶ Under White Oak's approach, the Lateral is part of the related piping, indistinguishable from the overall Facility. Thus, analysis of the Lateral becomes a minor part of the analysis for the Facility pursuant to § 56-580 D. Because of its relative size in comparison to the overall Facility, the Company contended that to meet the statutory requirements for the Facility, the Company was only required to agree to meet all applicable requirements and condition its Certificate as directed by the Commission in relation to the Lateral. In other words, the Lateral would be one of many line items in the Certificate for the Facility.

Under Columbia's view, the Lateral remains separate and distinct. Consequently, Columbia argued that White Oak failed to meet its statutory burden of proof with respect to the Lateral, even if § 56-580 D is applicable.²⁹⁷ For example, because the Lateral failed to provide

²⁹¹ *Id.*

²⁹² *Id.* at 76.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.* at 77.

²⁹⁶ White Oak Brief at 4.

²⁹⁷ Columbia Brief at 31.

sufficient information to make the environmental determinations required under the Utility Facilities Act, the Lateral would also fail the environmental requirements of § 56-580 D.

Thus, the issue turns on whether the Lateral is analyzed separately from the Facility. If the Commission were to find § 56-580 D applicable to the Lateral, such a finding would likely rest on the Lateral being but one aspect of the Facility. White Oak's view of the Lateral as an indistinguishable part of the Facility would be more consistent with application of § 56-580 D. Therefore, I find that if § 56-580 D is applicable to the Lateral, then the Lateral should be approved as a part of the Facility.

However, the second issue remains. That is, should approval of the Lateral as part of the related piping of the Facility extend or include portions of the Lateral that extend beyond the site or property to be owned by White Oak? Staff witness Tufaro explained that Staff did not oppose the Certificate to construct the Facility, including the Lateral, but only to the extent that the Lateral was on White Oak's property. Staff took no position regarding the portion of the Lateral extending beyond the site owned by White Oak.²⁹⁸

In crafting the Virginia Electric Utility Restructuring Act, the General Assembly was careful to state that the territorial rights of incumbent electric utilities would not be impaired by § 56-580 D.²⁹⁹ Because the focus of the Virginia Electric Utility Restructuring Act was on electricity, it is likely the General Assembly did not see a reason to specify natural gas distribution utilities also. Construction of the Lateral through Columbia's certificated service territory would be an impairment. Therefore, I find that if § 56-580 D is applicable to the Lateral, it is applicable only for the portion of the Lateral on the site of the White Oak Facility.

D. Notice

Columbia argued the Commission is precluded from issuing White Oak a certificate for the Lateral pursuant to the Utility Facilities Act because of the lack of notice.³⁰⁰ Even if the Commission proceeds under § 56-580 D, Columbia asserted that "[t]here has been no meaningful notice of the [Lateral] to potentially affected parties that would ensure the development of a complete record"³⁰¹

In response, White Oak pointed out that the public notice was in accordance with the Commission's Order for Notice and Hearing dated June 21, 2002, and specifically includes references to "related piping."³⁰² Furthermore, White Oak observed that the Commission's Order for Notice and Hearing referred to a new tap into the Transco pipeline and a pipeline to run within the AEP right-of-way.³⁰³

²⁹⁸ Tufaro, Tr. at 97.

²⁹⁹ Virginia Code §§ 56-580 E and F.

³⁰⁰ Columbia Brief at 28-30.

³⁰¹ *Id.* at 30.

³⁰² White Oak Brief at 4.

³⁰³ *Id.*

The Company states that it will create a new tap into the Transco pipeline approximately 3,000 feet north by northwest of the property boundary. The lateral pipeline will run within the existing AEP right-of-way to its point of interconnection with the Transco transmission line.³⁰⁴

Analysis of the notice issue follows the statutory analysis for the Lateral. That is, if the Utility Facilities Act is applicable, because White Oak's notice failed to include the Lateral, Columbia is correct that the Company's notice is deficient. However, if the Lateral is covered by § 56-580 D, then, as Columbia's presence in this case demonstrates, White Oak's notice was sufficient.

In summary, I find that White Oak has met the requirements of § 56-580 D for its proposed electric generating facility and recommend that the Commission issue a Certificate for its construction and operation. However, White Oak has failed to request authorization of the Lateral pursuant to the Utility Facilities Act. Therefore, the Commission should enjoin the Company from constructing the Lateral until it has received a Certificate pursuant to the Utility Facilities Act.

FINDINGS AND RECOMMENDATIONS

1. The Facility will have no material adverse effect upon the reliability of electric service provided by any regulated public utility;
2. The Facility advances the goal of electric competition in the Commonwealth;
3. The Facility will have no adverse effect upon the rates paid by customers for electric, natural gas, water, or sewer service from any regulated public utility in the Commonwealth;
4. The Facility will have no material adverse effect on any threatened or endangered plant or animal species, any wetlands, air quality, water resources, or the environment generally;
5. The Facility will have a positive impact on economic development;
6. Construction and operation of the Facility will not be contrary to the public interest;
7. Any Certificate issued by the Commission in this case should be conditioned to reflect White Oak's commitment to fund any necessary system upgrades;
8. Any Certificate issued by the Commission in this case should include a requirement that White Oak report to the Clerk of the Commission the name and corporate affiliation of any company entering a tolling agreement for the Facility;

³⁰⁴ *Application of White Oak Power Company For authority to construct and operate an electric generating facility*, Case No PUE-2002-00305, Order for Notice and Hearing at 2-3 (June 21, 2002).

9. Any Certificate issued by the Commission in this case should include a sunset provision that calls for the Certificate to expire if construction has not commenced within two years from the date of issuance;

10. Any Certificate issued by the Commission in this case should require White Oak to comply with all recommendations of the DEQ as agreed to by White Oak during this proceeding; and

11. The Commission should enjoin White Oak from constructing the proposed Lateral until the Company obtains a Certificate for the Lateral pursuant to the Utility Facilities Act.

In conclusion, based on the evidence received in this case, and for the reasons set forth above, ***I RECOMMEND*** the Commission:

1. ***GRANT*** the Applicant authority and a certificate of public convenience and necessity pursuant to § 56-580 D of the Code of Virginia to construct and operate an electric generation facility, and its associated facilities, excluding the natural gas lateral pipeline, in Pittsylvania County as described above and based upon the record developed herein;

2. ***DIRECT*** White Oak to fund any necessary system upgrades;

3. ***DIRECT*** White Oak to report to the Clerk of the Commission the name and corporate affiliation of any company entering a tolling agreement for the Facility;

4. ***PROVIDE*** that the Certificate will sunset if construction has not begun within two years from the date of a Commission final order granting approval of the Facility;

5. ***DIRECT*** White Oak to comply with recommendations of the DEQ as agreed to by White Oak during this proceeding;

6. ***PROVIDE*** that the Certificate is conditioned on the receipt of all permits necessary to operate the Facility, and direct White Oak to provide a complete list to the Division of Energy Regulation;

7. ***ENJOIN*** White Oak from constructing the proposed natural gas lateral pipeline until it has obtained a certificate of public convenience and necessity pursuant to the Utility Facilities Act; and

8. ***DISMISS*** this case from the docket of active matters.

COMMENTS

The parties are advised that pursuant to Rule 5 VAC 5-20-120 C of the Commission's Rules of Practice and Procedure, any comments to this Report must be filed with the Clerk of the

Commission in writing, in an original and fifteen copies, within twenty-one days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

Alexander F. Skirpan, Jr.
Hearing Examiner